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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS

SUSAN BITTER SMITH, Chairman
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In the matter of:

KENT MAERKI and NORMA JEAN COFFIN
aka NORMA JEAN MAERKI, aka NORMA
JEAN MAULE, husband and wife,

DENTAL SUPPORT PLUS FRANCHISE, LLC,
an Arizona limited liability company

Respondents.

DOCKET NO. S-20897A-13-0391

SECURITIES DIVISION'S REPLY TO
RESPONDENTS' RESPONSE TO
SECURITIES DIVISION'S RESPONSE
RE: FILING OF CHAPTER [sic] 7
BANKRUPTCY AND CONTINUACE
[sic] FOR FILING OF CLOSING
BRIEF

Respondents Kent Maerki and Norma Jean Coffin ("Respondents") filed Respondents' Response to the Securities Division's Response re: Filing of Chapter [sic] 7 Bankruptcy and Continuace [sic] for Filing of Closing Brief ("Respondents' Response"). Respondents assert that the Arizona Corporation Commission ("ACC") should seek an advisory opinion related to whether it is stayed pursuant to the automatic stay provisions of Section 362 of the U.S. Bankruptcy Code. This is a premature, unnecessary step seeking only to delay the filing of Post-Hearing Briefs.

On November 18, 2013, the Securities Division filed a Notice of Opportunity against Respondents and one of their companies. Respondents requested a hearing and after many delays, a hearing was conducted between July 13, 2015 to July 21, 2015. The Administrative Law Judge ("ALJ") ordered the parties to file Post-Hearing Briefs by September 18, 2015. The Respondents voluntarily filed for protection under the U.S. Bankruptcy Code on August 7, 2015. At this time there is no order or judgment against the Respondents. No efforts to collect are on-going since

1 there is no order or judgment. At this point there is a possible unliquidated claim depending upon
2 the ruling of the ALJ and decision of the ACC.

3 Administrative proceedings against debtors are exempt from the automatic stay pursuant to
4 Section 362(b)(4) when the government seeks to initiate or continue an action under its police or
5 regulatory powers. *In Re Universal Life Church, Inc.*, 128 F.3rd 1294, 1297 (C.A.9 (Cal.) 1997); 3
6 Collier on Bankruptcy ¶ 362.05[5][b], at 362-58 (15th ed. 1996). To prevent bankruptcy from
7 becoming “a haven for wrongdoers,” the automatic stay should not prevent governmental
8 regulatory, police and criminal actions from proceeding. *In Re Universal Life Church, Inc.*, 128
9 F.3rd 1294, 1297 (C.A.9 (Cal.) 1997); 3 Collier on Bankruptcy ¶ 362.05[5][b], at 362-58 (15th ed.
10 1996).

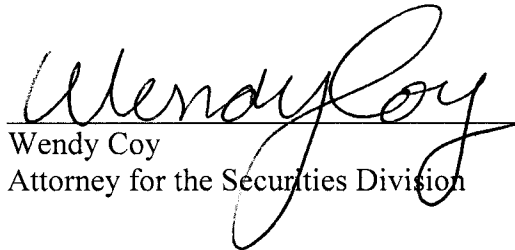
11 *In re Poule*, 91 B.R. 83, 85 (9th Cir. BAP 1988), the court held that when a state
12 agency imposes civil penalties on a debtor for fraudulent conduct or when the **state agency**
13 **is attempting to prevent future fraudulent conduct through injunctive relief**, the action
14 comes within the scope of § 362(b)(4) and is excepted from the automatic stay. *In re*
15 *Poule*, 91 B.R. at 87 (emphasis added).

16 The United States District Court for the District of Arizona has specifically held that
17 the automatic stay does not preclude an investigation by the ACC regarding possible
18 violations of the Securities Act of Arizona because actions of the ACC are pursuant to the
19 ACC’s police and regulatory power. *In re Knoell*, 160 B.R. 825, 826 (D. Ariz. 1993). The
20 exception in § 362(b)(4) applies whenever a governmental unit is exercising a valid and
21 traditional police or regulatory power. *In re PMI-DVM Real Estate Holdings, L.L.P.*, 240
22 B.R. 24, 30 (D.Ariz. 1999).

23 There is no judgment in this matter. The matter is pending a recommended order by
24 the ALJ. The ACC has not attempted to collect on the judgment. Rather, the ACC has
25 sought to only fix the amount of restitution and penalties at a future open meeting date by
26 an entry of a Decision against Respondents. If a Decision is issued by the ACC that

1 includes monetary provisions, then it is appropriate to collect the debt through any pending
2 bankruptcy. But first there must be a Decision issued by the Commission.

3 RESPECTFULLY SUBMITTED this 17th day of September, 2015.

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6 Wendy Coy
7 Attorney for the Securities Division
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SERVICE LIST FOR: KENT MAERKI and NORMA JEAN COFFIN aka NORMA JEAN
MAERKI, aka NORMA JEAN MAULE, husband and wife, DENTAL SUPPORT PLUS
FRANCHISE, LLC

ORIGINAL and 8 copies of the foregoing
filed this 17th day of September, 2015, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing hand-delivered
this 17th day of September, 2015, to:

The Honorable Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY of the foregoing mailed
this 17th day of September, 2015, to:

Kent Maerki
10632 N. Scottsdale Road, Suite B479
Scottsdale, AZ 85254

Norma Coffin
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